

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JOHNNY THOMAS, as Bankruptcy §  
Trustee of Performance Products, Inc. and §  
CAROLYN PEARCY, in Her Capacities §  
As Trustee of the Percy Marital Trust §  
and Executor of the Estate of James Percy §

vs.

No. 5:16-cv-951-DAE

LOU ANN HUGHES, ADVANCED §  
PROBIOTICS INTERNATIONAL, LLC §  
and PERFORMANCE PROBIOTICS, LLC §

**MOTION TO AMEND CHARGING ORDER**

Plaintiffs Johnny Thomas, as Bankruptcy Trustee of Performance Products, Inc. (“Trustee Thomas”) and Carolyn Percy, in her capacities as Trustee of the Percy Marital Trust and Executor of the Estate of James Percy, (“Percy”) file this Motion to Amend Charging Order as follows:

1. On September 10, 2020, the Court issued a charging order, Docket No. 235 (the “Charging Order”).
2. Defendants appealed the Charging Order and on March 3, 2022, the U.S. Fifth Circuit Court of Appeals upheld the Charging Order with the following modifications:

Hughes and ~~M. G. & Sons, LLC~~ must obtain leave of this court before a) transferring the Property to any third party; b) transferring any M. G. & Sons funds to any third party except for transactions in the ordinary course of business; or c) transferring Hughes's interest (or any part thereof) in M. G. & Sons, LLC to any third party.

*Thomas v. Hughes*, No. 20-50827, 2022 U.S. App. LEXIS 5708, at \*9 (5th Cir. 2022).

3. Accordingly, Plaintiffs request that the Court amend the charging order to reflect the modifications by the Court of Appeals. Furthermore, upon review of Bexar County Appraisal

District property records, Plaintiffs have identified the following description of the Property subject to the Charging Order:<sup>1</sup>

0.4933 acres, more or less in Bexar County, Texas  
Legal Description: NCB 12051 BLK LOT 36 EXC SE IRR 5.63 FT OF 36  
Bexar County Appraisal District Tax ID number 498153  
Bexar County Appraisal District Geographic ID: 12051-000-0361  
also known as 737 Isom Road, San Antonio, Bexar County, Texas 78216-4027

4. Accordingly, Plaintiffs respectfully request that this Court amend the Charging Order to reflect the modifications by the Court of Appeals and the above property description.

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully request that the Court grant this Motion to Amend Charging Order and all such further relief to which Plaintiffs may show themselves justly entitled at law and in equity.

Respectfully submitted,

/s/ Clark Richards

**DANIEL R. RICHARDS**

State Bar No. 00791520

[drichards@rrsfirm.com](mailto:drichards@rrsfirm.com)

**CLARK RICHARDS**

State Bar No. 90001613

[crichards@rrsfirm.com](mailto:crichards@rrsfirm.com)

**RICHARDS RODRIGUEZ & SKEITH, L.L.P.**

816 Congress Avenue, Suite 1200

Austin, Texas 78701

Tel: (512) 476-0005

Fax: (512) 476-1513

**ATTORNEYS FOR PLAINTIFFS**

**JOHNNY THOMAS, AS**

**BANKRUPTCY TRUSTEE FOR**

**PERFORMANCE PRODUCTS, INC.**

**AND CAROLYN PEARCY, IN HER**

**CAPACITIES AS TRUSTEE OF THE**

**PEARCY MARITAL TRUST AND**

**EXECUTOR OF THE ESTATE OF**

**JAMES PEARCY**

---

<sup>1</sup> Under Texas law, Appraisal District records constitute valid and binding property descriptions. *AIC Mgmt. v. Crews*, 246 S.W.3d 640, 648 (Tex. 2008); *WK Props. v. Perrin SA Plaza, LLC*, No. 04-20-00457-CV, 2021 Tex. App. LEXIS 9503, at \*7-8 (Tex. App.—San Antonio Nov. 24, 2021, no pet.) (mem. op.).

**CERTIFICATE OF CONFERENCE**

I HEREBY CERTIFY that I have conferred with counsel for the defendants concerning this motion and they have no objection to the relief sought in this motion.

/s/ Clark Richards

**CLARK RICHARDS**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 28, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically notify the following counsel of record electronically:

Leslie Sara Hyman  
Thomas Rice  
Pulman, Cappuccio, Pullen,  
Benson & Jones, LLP  
2161NW Military Highway, Suite 400  
San Antonio, Texas 78213  
[lhyan@pulmanlaw.com](mailto:lhyan@pulmanlaw.com)  
[trice@pulmanlaw.com](mailto:trice@pulmanlaw.com)

/s/ Clark Richards

**CLARK RICHARDS**